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Linda Construction, Inc. and Excavating, Grading, Asphalt, Private Scavengers, Automobile Salesroom Garage Attendants, and Linen and Laundry Local Union No. 731, affiliated with the International Brotherhood of Teamsters. Case 13–CA–125200

September 30, 2014

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND SCHIFFER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge and an amended charge filed by Excavating, Grading, Asphalt, Private Scavengers, Automobile Salesroom Garage Attendants, and Linen and Laundry Local Union No. 731, affiliated with the International Brotherhood of Teamsters (the Union) on March 26 and May 16, 2014, respectively, the General Counsel issued a complaint on May 30, 2014, against Linda Construction, Inc. (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer to the complaint. However, on July 29, 2014, the Respondent filed a motion to withdraw its answer, and on August 7, 2014, the Regional Director granted that motion.

On August 11, 2014, the General Counsel filed a Motion for Default Judgment with the Board. On August 12, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by June 13, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer on July 10, 2014, it subsequently withdrew its answer. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be

considered to be true.¹ Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation with an office and place of business in Country Club Hills, Illinois (Respondent's facility), has been engaged in the business of garbage hauling in the Chicagoland area.

During the past calendar year, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Country Club Hills, Illinois facility goods, products, and materials valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Linda McGee	President
Jesse McGee	Vice President

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act (the unit):

All full-time and regular part-time truck drivers employed by the Employer at its facility located in County Club Hills, Illinois; but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

Since about November 1, 2010, and at all material times, the Respondent recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement effective by its terms from November 1, 2010, to September 30, 2013.

At all times since November 1, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

About November 2013, the Respondent unilaterally ceased making required contributions to the Union's health and welfare fund and the Union's pension fund.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without providing the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union as the collective-bargaining representative of the unit employees by, since about November 2013, unilaterally ceasing to make required contributions to the Union's health and welfare fund and the Union's pension fund, we shall order the Respondent to make all required contributions to the funds that have not been made, including any additional amounts due the funds, in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Further, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make any required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981),² such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

² To the extent an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes to the fund.

ORDER

The National Labor Relations Board orders that the Respondent, Linda Construction, Inc., Country Club Hills, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Excavating, Grading, Asphalt, Private Scavengers, Automobile Sales-room Garage Attendants, and Linen and Laundry Local Union No. 731, affiliated with the International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the unit employees by unilaterally ceasing to make required contributions to the Union's health and welfare fund and pension fund. The unit is:

All full-time and regular part-time truck drivers employed by the Employer at its facility located in County Club Hills, Illinois; but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all required contributions to the Union's health and welfare fund and pension fund that have not been made since November 2013, including any additional amounts due the funds, as set forth in the remedy section of this decision.

(b) Reimburse unit employees for any expenses ensuing from the Respondent's failure to make the required payments to the funds, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Country Club Hills, Illinois, copies of the attached notice marked "Appendix."³ Copies of the no-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals."

LINDA CONSTRUCTION, INC.

tice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former unit employees employed by the Respondent at any time since about November 2013.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2014

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with Excavating, Grading, Asphalt, Private Scavengers, Automobile Salesroom Garage Attendants, and Linen and Laundry Local Union No. 731, affiliated with the International Brotherhood of Teamsters (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by unilaterally ceasing to make required contributions to the Union's health and welfare fund and pension fund. The unit is:

All full-time and regular part-time truck drivers employed by the Employer at its facility located in County Club Hills, Illinois; but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make all required contributions to the Union's health and welfare fund and pension fund that have not been made since November 2013, including any additional amounts due the funds, and WE WILL reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

LINDA CONSTRUCTION, INC.

The Board's decision can be found at www.nlrb.gov/case/13-CA-125200 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

